IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4180 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULABSINHJI H JETHWA,SINCE DECEASED THROUGH HEIRS & LEGAL R.
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 4180 of 1990
MR YOGESH S LAKHANI for Petitioners No. 1-1/3
MR BY MANKAD, AGP for Respondents

CORAM : MR.JUSTICE K.M.MEHTA

Date of Order: 23/01/2002

ORAL JUDGMENT

1. Gulabsinhji Hamirsinhji Jethwa, petitioner had originally filed this petition for a writ of certiorari or any other appropriate writ, order or direction directing the respondents to pay the due amount of pension, gratuity, arrears of pay and any other due and

legitimate amount to the petitioner from the date which it has accrued with interest.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner was appointed as II Grade Head Constable in Police Department of erstwhile Porbandar State in the year 1942. The petitioner continued to serve as such till the merger of the Porbandar State in the year 1948. It was submitted that after the merger of the State into the former State of Saurashtra the petitioner was transferred to the Anti Corruption Branch and was posted at Porbandar. Thereafter the petitioner was transferred to Surendranagar in the month of August 1952. Since the petitioner was sick, he applied for leave which was supported by medical certificate, but since he had not resumed the duty, some departmental proceedings were initiated against the petitioner and ultimately the petitioner was reinstated in service.

2.2 The petitioner thereafter posted at Jamnagar and he resumed his duties there. It was submitted that since the petitioner was not keeping good health and was keeping a morbid health, the petitioner requested the authorities by a written letter to invalidate him on the ground of sickness which was supported by necessary medical certificates and further requested to grant him invalid pension.

2.3 It is a case of the petitioner that the petitioner was at that time suffering from a disease viz. NEURASTHENIA (Mental Disorder) and for that reason the petitioner had requested the concerned authorities to invalidate him and accordingly retire him on invalid pension. Thereafter petitioner addressed a letter dated 4.1.86 to the authorities requesting them to do the needful for granting the amount of pension and arrears of pay. The Home Department - respondent No.1 replied to the petitioner by a letter dated 15.4.86 that petitioner's letter is sent for doing the needful to the respondent No.3. Thereafter petitioner also addressed a letter dated 25.4.86 to the District Superintendent of Police, Junagadh - respondent No.3 and also addressed a letter to Director General of Police - respondent no.2 on 2.5.86.

2.4 The respondent no.2 informed the petitioner by his letter dated 5.8.86 that the application of the petitioner is sent to respondent No.3 requesting the respondent No.3 to do the needful in the matter and for sending the detailed report to the respondent No.2.

2.5 Thereafter petitioner addressed a letter to the Chief Secretary, State of Gujarat, by letter dated 7.7.86 requesting the authority to do needful in this behalf. The respondent No.3 thereafter addressed a letter to the petitioner dated 8.8.86 informing the petitioner that the respondent No.3 is not in receipt of the application of the petitioner dated 1.4.86 and therefore the authority requested the petitioner to send a copy of that application dated 1.4.86 with the specific facts about the granting of pension and arrears of pay.

2.6 The petitioner thereafter addressed a letter dated 25.8.86 to the respondent No.3. In the said letter it was mentioned by the petitioner that he had submitted his resignation on 16.11.1956 and requested the authority to retire him on invalidate pension on the ground of morbid health stated in the said behalf. The petitioner also addressed a reminder by letter dated 22.9.86 to the authority in this behalf.

2.7 Thereafter respondent No.3 addressed a letter dated 26.9.86 to the petitioner and stated that as he has resigned from service therefore he is not entitled to the amount of pension and gratuity.

2.8 Thereafter petitioner also addressed a letter dated 4.10.86 to the respondent No.3 and stated that he has not resigned from the service but he had applied to retire him on invalid pension for the reasons of his disease viz. NEURASTHENIA (Mental dis-order). The petitioner also thereafter addressed a letter dated 15.1.87 to the respondent No.3 in this behalf. Thereafter correspondence ensue between the petitioner and the authorities, but as the petitioner did not receive the pension he has filed the present petition before this Court somewhere in December 1989.

3. During the pendency of the petition it appears that petitioner has expired and his legal heirs were also brought on record.

4. On behalf of the respondents, originally affidavit of Shri S.S.Trivedi, District Superintendent of Police, Junagadh District dated 8th March, 2001, was filed. However for clarifying further aspect, a further affidavit filed by Shri H.R.Suthar working as Under Secretary with the Home Department dated 23.1.2002 was also filed in this behalf.

4.1 In the said affidavit it is a case of the

respondent that as per petitioner's own statement in his application dated 1.4.86 that he has given resignation on 16.11.56 to the Inspector General of Police of Former State of Bombay and Inspector General of Police, Bombay State for which there is no reply given by the authority and therefore he is not entitled to get any pension or retiremental benefits as per B.C.S.R. Rules.

5. Mr.B.Y.Mankad, learned AGP for the respondent-State has relied upon the letter dated 29.4.91 addressed by Accounts Officer, Office of the Director General of Police, Ahmedabad, to the petitioner in which it has been specifically stated that if petitioner really desires to obtain pension on invalidity ground then as per Rule 201 of the BCSR Rules he has to obtain certificate of Civil Surgeon and he has to annex the civil surgeon certificate alongwith the application for obtaining pension on ground of invalidity. However, the petitioner has not annexed the civil surgeon certificate alongwith the application and therefore he is not entitled to the pension on ground of invalidity.

6. From the record it appears that the petitioner has not replied to the said letter in this behalf. Over and above it has been stated that petitioner has resigned the service in the year 1956 whereas for the first time he had applied for pension to the Home Department on 1.4.86 which is also after a period of 30 years and therefore even on the ground of delay also he is not entitled for the same.

7. I have considered the record of the case namely correspondence ensue between petitioner and the respondent authorities in this behalf and the affidavit in reply on behalf of the respondents. In my view in view of the letter dated 29th April, 1991, addressed by Accounts Officer, office of the Director General of Police, Ahmedabad to the petitioner in which it has been specifically stated that if petitioner desires to obtain pension on invalidity ground then as per Rule 201 of the BCSR Rules he has to obtain certificate of Civil Surgeon and he has to annex the said certificate alongwith the application for obtaining pension on ground of invalidity. As petitioner failed and neglect to annex the civil surgeon certificate alongwith the application he is not entitled to the pension on the ground of invalidity. I have considered Rule 201 of the BCSR Rules also which clearly provides that if government servant desires to obtain pension on the ground of invalidity he ought to have accompanying the medical certificate of unfitness from the Civil surgeon. In my view the

petitioner has completely failed to prove that he is completely and permanently incapacitated for further service in the department to which he belongs in this behalf.

8. In view of said rule 201 which has not been complied by the petitioner therefore also the petitioner is not entitled for the pension on the ground of invalidity. In view of the same the petition is dismissed. Rule is discharged. No order as to costs.

(K.M. Mehta, J.)

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